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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Art Unit: 3634 Examiner: THOMPSON II, Hugh B.

In Re Application of: WOLLER, Ronald R. et al)
Serial No.: 10/776,845)
Filed: February 11, 2004) Appeal No. _____
For: FOOTHOLD FOR CLIMBING TREE STANDS)

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Commissioner for Patents
P.O. Box 1450
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REPLY BRIEF UNDER 37 C.F.R. § 41.41

INTRODUCTION

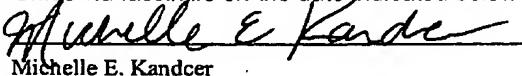
This Brief is in reply to the Examiner's Answer, mailed January 17, 2007. This filing is believed to be timely as it is filed within two months of the Examiner's Answer, but if any extension is required, please consider this a request therefor. The Commissioner is authorized to charge any additional fees required or credit any overpayment to Deposit Account 50-1513.

Applicants' Response to the Examiner's Answer

The Examiner's Answer has been received and reviewed. The Present Reply is directed to new arguments presented by the Examiner for the first time in the Examiner's Answer. Notably, the Examiner appears to agree with Applicants' position that stiff footholds are not necessarily rigid footholds. Nevertheless, the claim rejections are maintained, supported primarily by the Examiner's construction of certain claim terminology in manners inconsistent with the ordinary meaning of the terminology, and contrary to the

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Michelle E. Kandcer

03/15/2007
Date

express teaching of Applicants' specification.

Firstly, the Examiner states on page 5 of his Answer: "Nowhere in Woller-104 is there a combination of terms or phrases that are synonymous with 'stiff, flexible straps, which are not rigid.' Were such a combination of phrases or terms clearly disclosed in the reference, they would in the Examiner's opinion, present an ambiguity reducing the likelihood of the reference being used as a [sic] anticipatory reference." This appears to be the first instance in which the Examiner impliedly agrees that the stiff objects are not necessarily rigid objects. Applicants respectfully submit that the Woller '104 patent does adequately disclose that the structure of the footholds are stiff, flexible straps, which are not rigid. As stated in column 7, lines 26-40 of Woller '104:

In order that the foot-support assembly 26 can be manipulated by the outdoorsman, the platform assembly 70 is provided with a pair of foot straps 96. Each end of the foot strap 96 may be secured one of the slats 74 to provide a loop which accommodates each foot of the outdoorsman. A suitable conventional adjustment device may be provided on each foot strap 96 so that the strap can be adjusted to the comfort of the outdoorsman during use. Alternatively, the straps can be adjusted on a more permanent basis by repositioning the strap attachment points. Such attachment points may be by screws or other threaded fasteners. Generally, each strap 96 would be adjusted to hold the outdoorsman's foot close to the platform 70 so that raising, lowering and tilting movements of the outdoorsman's foot will be transferred to the foot-support assembly 26.

The straps may be fashioned from suitable, conventional nylon web material. One-inch wide nylon webbing is preferred since it has a stiffness that causes the strap to stand up presenting a loop for the outdoorsman. In addition, other materials such as cotton, dacron, synthetic polymers, and the like can be used for the foot straps 96, or the strap 66 of the seat assembly.

Clearly, the Examiner has mischaracterized the Woller '104 reference. As is generally well known to those skilled in the art (and to just about anyone), the term "strap" connotes a flexible member or belt. Moreover, one-inch wide nylon webbing, which is clearly a flexible material, is preferred as it has a stiffness that causes the strap to stand up. The other materials that could be employed are likewise straps of materials that are flexible. Thus,

Applicants submit that the Woller '104 does indeed adequately disclose footholds that are flexible, not rigid.

The Examiner further states that the Applicants recite devices that are "substantially rigid," "a phrased that on its face suggests to one of ordinary skill in the art something less than or not quite rigid." (page 5 of the Examiner's Answer of January 17, 2007). Substantially rigid devices can be less than perfectly rigid, but substantially rigid devices are certainly not flexible.

Lastly, the Examiner's rationale for how Woller '104 allegedly teaches rigid footholds is illogical. The Examiner correctly states that the Applicants in the present specification state that portions of the foothold comprise a molded plastic body. Molded plastic bodies, as generally well known to those skilled in the art, are rigid or substantially rigid. The Examiner then states that PVC is both a synthetic polymer and a molded plastic. Actually, PVC is a synthetic polymer, is a plastic, and can be molded. The Examiner concludes that since the Woller '104 patent states that the straps can be constructed of a synthetic polymer and that since PVC is a synthetic polymer, Woller '104 therefore discloses rigid footholds constructed of PVC. This is "bootstrapping" of the worst kind (no pun intended). For the reasons set forth herein and in the Applicant's Appeal Brief filed on October 6, 2006, nothing in Woller '104 can be read to disclose rigid footholds. Accordingly, the Examiner's rejections cannot be sustained.

Respectfully submitted,
GARDNER GROFF SANTOS & GREENWALD, P.C.



Michelle E. Kandcer
Reg. No. 54,207

GARDNER GROFF SANTOS & GREENWALD, P.C.
Customer Number 23506
Tel: 770.984.2300
Fax: 770.984.0098